2: Schapera E-4, 5 (no date) 1930
FX13 Hottentot FX13
Nama
Cape Hottentots

695 was listened to with undivided attention. The matter was then thoroughly discussed by the councillors, the verdict being arrived at by the decision of the majority. If the accused was acquitted, a few head of cattle from the herds of his accusers were adjudged to
696 him as compensation. But if he was found guilty, and the headman, in whose hands the final sentence lay, pronounced in favour of death, the sentence was immediately executed. The headman, as chief executioner, rushed towards the criminal and felled him to the ground
[684] with a heavy blow of the kirri; all the other men then violently attacked him until he was beaten to death.[1]

672 No distinction was made in the execution of this sentence according to the status, wealth, age, or sex of the criminal; the headman himself, if found guilty of such a crime, would be dealt with in the same
[704] way. The body of the criminal, however, was buried with all the customary formalities observed in normal cases of death; his property was inherited as usual by his heirs, and no stigma attached to them as
681 a result of his crime and his fate. There is good reason for supposing
695 that this corporal punishment was not necessarily carried to extremes, but could be made more or less severe, according to the nature of the case and the decision of the council.

692 There was no appeal from the verdict of the kraal council, either
699 in civil disputes or in crimes. The main tribal council, consisting of the chief and the kraal headmen, dealt only with disputes between different kraals. It was summoned by the chief on receipt of any complaint, and its proceedings were conducted along the same lines as those of the kraal councils.

692 The description given above can hardly be regarded as exhaustive or even as entirely trustworthy. Its interest lies mainly in the comparison it affords with the conduct of trials among the Naman, about whose legal usages we have more adequate information.[2] The local kraal councils can deal with civil disputes and minor offences, and impose corporal punishments or fines; but there is always an appeal from their judgments to the main tribal council, to which all cases of importance are also referred as a court of first instance. No special distinction is made in procedure between civil and criminal
693 cases. The judges in all important trials are the elected councillors

[1] An eye-witness account of such an execution, in which four men were beaten to death, is given by Cordes-Middelberger, op. cit., I, 172–3.

[2] The fullest accounts are given by Wandres, "Ueber Rechtsverhältnisse und Rechte der Hottentotten," 170–4; Vedder, "The Nama," 149–51; Rudolf, "Das Recht der Hottentotten," 372–7; cf. also Hahn, "Die Nama-Hottentotten," 30ff.; von François, Nama und Damara, 102; Wandres, "Die Khoi-Khoin," 344–5; Report on the Natives of S.W.A., 73–4 passim.

of the tribe. The eldest of them presides over the proceedings; 693
the others are his assessors, *sa-augu*, and can take part freely in the
examination of the litigants or accused and of the witnesses. One of
them also acts as public prosecutor, another as advocate for the defence
(*gowabe-aob*, *interveenor*). The post of councillor, as we have seen,
is honorary and carri: no salary, but certain court fees are levied in
trials. The complainant must deliver a couple of fat goats in advance
in order to have his case heard, and these provide food for the judges
as long as the court sits. The defendant also may be required to
contribute a similar fee, even before the verdict is arrived at.

The initiative in any legal proceedings lies in the hands of the 694
complainant. Self-help is not permitted. He must lodge his grievance
with the official known as the magistrate. The latter then summons
the councillors, who assemble together on the day fixed for the hearing.
The court meets as a rule out in the open, under the shade of some
tree, where all squat in a circle. The litigants or accused and the
witnesses are then summoned by the public messenger, who as sign
of his function carries with him a long stick. With this, on entering
the hut of the defendant, he knocks three times on the ground, without
speaking a word. Then he goes away as silently as he came. The
defendant now knows that his presence is required. If he refuses
to appear, which in fact seldom happens, or fails to send an acceptable
excuse in time, several strong men are sent to take and bring him
by force. For defying the summons he then receives a special flogging. [681]
If he is accused of some crime, and is suspected of meditating flight,
he is brought before the court with a rieml round his neck and his hands
tied behind his back. Witnesses summoned are obliged to appear,
and if they do not are fetched and punished in the same way as the
defendant. The latter must stand or kneel in the centre of the court 695
circle, but if a woman is permitted to sit. The complainant stands
or squats nearby till he is called upon to speak, and the summoned
witnesses must also remain within a reasonable distance.

The magistrate now states the case to the council. The chairman
then calls on the complainant to speak, next on the defendant and
on all the witnesses one after the other. One witness as a rule is
sufficient, but more are desirable. No hearsay evidence is allowed;
only what the witness has himself seen and heard is admitted as valid.
False testimony is severely condemned, the perjurer being punished [687]
according to the mischief he causes. Examination and cross-examina- 695
tion are conducted by the councillors. They rarely employ direct 695

[illegible] – Author]

5: Vedder M-5 (ca. 1910) 1928
FX13 Hottentot FX13
NAMA

533 517 monium enthusiast, however, did not care for that and continued playing up to midnight. When this was prohibited as against the rules of the house, he answered that he did not know that they were not allowed to study after nine o'clock. One night after that he was found at the harmonium at two o'clock in the morning and excused himself by saying that the rules of the house, which he was willing to abide by, did not stipulate at what time of the morning a pupil could begin to study! In four months' time he had made so much progress in playing the harmonium that he accompanied the hymns in the community services.

532 517 8. Many of the young people also show aptitude in the art of painting. A grandson of the notorious Hendrik Witbooi painted two ostriches with such a typically African background in coloured chalk on the board for his final examination after three years' preparation for the profession of teacher, that even the Government Inspector was amazed. Thus, the results of the mental development of the Nama, clearly perceptible to-day, show that the trouble and pains bestowed on them bear fruit; and nothing is more erroneous than to imagine the Hottentots are mentally one of the most primitive races. In the political economy of South-West Africa their weakly physique will play a very small part however; but for work which does not exact much bodily strength but requires intelligence the Nama will in the future be preferred to other natives.

IX. Usage and Laws.

642 643 645 The Chief with councillors and magistrate is the representative of the law. The last named is his right hand in all public and legal matters. Under normal circumstances the son inherits the chieftainship from his father. In times of peace the powers of the Chief are very limited. Without having consulted a mass meeting and without the decision of the councillors the instructions of a chief are of very little consequence. The form of government of a chieftainship is altogether democratic. Within this democratic frame, however, the Chief rules like a patriarch. This state of affairs is radically changed during war. If a war breaks out the Chief becomes dictator.

645 643 The councillors are elected at a mass meeting, and at the same time function as judges. Decisions by them are regarded as laws by the tribe and their sentences, passed under the presidency of the eldest among them, are executed. There is no appeal to a higher court. Only in cases where there is no consensus of opinion among the judges with regard to the passing of a sentence in the matter referred to the Chief whose casting vote then settles the question finally.

[643] [641] 642 2. As the Nama possess a very fine sense of justice and injustice, legal disputes are not at all uncommon. But since